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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-210499

DATE: June 13, 1983

MATTER OF: Microtech Industries, Inc.

DIGEST:

1. Bid protest, filed after bid opening, alleging that the IFB, as amended, was ambiguous, is timely since the protester was unaware of the amendment and, therefore, the basis of protest until after bid opening.
2. Contracting agency properly evaluated bids consistent with the evaluation scheme based on anticipated work requirements set forth in amendment to the invitation for bids as amended, rather than, as protester contends, pursuant to initially issued scheme which set forth three possible evaluation alternatives.

Microtech Industries, Inc. (Microtech), protests the award of a requirements contract to Matco Micrographics, Inc. (Matco), by the Department of the Navy (Navy) under invitation for bids (IFB) No. NOO104-83-B-0066, for aperture card services.

We deny the protest.

The Navy issued amendment No. 1 after a prospective bidder alleged that the IFB's evaluation criteria were ambiguous. That amendment provided that evaluation for award would be based on extended prices based on the 12-month usage estimate for the four line items in the delivery order limitations portion of the IFB. Matco was the low bidder under this evaluation scheme. Microtech did not receive a copy of this amendment and, consequently, failed to acknowledge it.

Microtech's position is that the IFB's evaluation factors were not ambiguous prior to the issuance of amendment No. 1. Microtech submits that the schedule

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clearly listed the four services to be performed, the estimated minimum and maximum monthly quantities, and a space for unit price and total amount. Apparently, Microtech would be the low bidder if the evaluation was based on unit or aggregate prices for the minimum and maximum monthly quantities. Microtech contends that the amendment makes the IFB ambiguous and that award should be made on the basis of the original IFB schedule. In regard to its failure to receive the amendment, Microtech questions the effectiveness of the Navy's mailing because the abstract of bids indicates that at least two other bidders did not receive the amendment. Furthermore, Microtech alleges that it is questionable whether Matco acknowledged the amendment since Microtech was given an unsigned copy of Matco's amendment.

The Navy argues that Microtech's protest is untimely since it questions alleged apparent improprieties which must be protested prior to bid opening, citing 4 C.F.R. § 21.2(b)(1) (1983). In the alternative, the Navy contends that the IFB, as amended, clearly and adequately defined the basis for award and that award was required to be made on that basis. The Navy advises that the amendment was not considered material and no bid was rejected for failure to acknowledge it. Furthermore, the Navy submits that there was no deliberate attempt to exclude anyone since it mailed the amendment to all of the prospective bidders originally solicited.

As for timeliness, Microtech was not aware of the protested amendment until after bid opening. Therefore, because Microtech raised this basis of protest within 10 working days of advice of the amendment's existence, it is timely and will be considered on the merits. 4 C.F.R. § 21.2(b)(2) (1983).

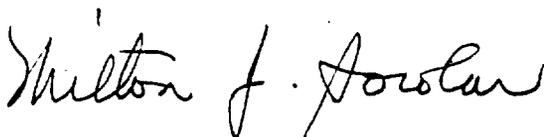
Microtech's contention that the IFB, including amendment No. 1, was ambiguous is without merit. As stated above, amendment No. 1 specifically provided the basis for award, the 12-month usage quantities. In contrast, the IFB, as initially issued, provided no specific basis for award, but three alternatives--award based on minimum quantities, maximum quantities, or 12-month usage quantities.

Microtech also argues that amendment No. 1 should be ignored since the Navy determined that the amendment was a mere clarification and not material. We note that the Navy's determination was limited to the question of whether

to reject any bids that failed to acknowledge the amendment. In that context, the Navy apparently found that since each bidder which submitted unit prices would still be obligated to perform as required by the IFB, the failure to acknowledge the amendment could be waived as a minor informality. (Contrary to Microtech's assertion, the record contains a properly acknowledged amendment of Matco's bid.) In any event, the amendment was material to the extent that it specifically set forth the previously unspecified basis for award and, of particular significance, stipulated an award basis that represented the agency's actual anticipated requirements. In the latter regard, award on any other basis would not necessarily have resulted in the low cost to the Government in violation of statute and regulations. See Tennessee Valley Service Company, B-188771, July 20, 1977, 77-2 CPD 40. This is amply demonstrated by the fact that Microtech's bid is low on all bases except the proper one, which was based on the anticipated work established by amendment No. 1. Accordingly, the award was correctly based under the IFB, as amended.

Microtech's bid was evaluated on a common basis with the other bids, and the protester has not demonstrated prejudice by the agency's evaluation of its bid based on the actual work requirements. Even if Microtech could show an adverse effect on its competitive standing by the non-receipt, we have held that no relief is appropriate unless failure to receive is due to a conscious and deliberate effort by the procuring agency to exclude a bidder from participating in the competition. Marino Construction Company, Inc., B-204970, February 25, 1982, 82-1 CPD 167. Microtech neither alleges nor provides any evidence that the Navy deliberately failed to send the firm amendment No. 1. Rather, Microtech only questions the effectiveness of the Navy's mailing of amendment No. 1 since the abstract shows that at least two bidders did not receive the amendment. This alone is not enough to show a conscious or deliberate effort to exclude Microtech from this procurement. Moreover, we note that the abstract notes only that two bidders did not return the amendment, and no reasons are given therefor.

Protest denied.

for 
Comptroller General
of the United States